

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: ZIMMER NEXGEN KNEE)
IMPLANT PRODUCTS LIABILITY) MDL NO. 2272
LITIGATION)
)
This Document Relates to:) Master Docket Case No. 1:11-cv-05468
)
Joyce Miller v. Zimmer, Inc.,)
et al., 1:12-cv-02689) Honorable Rebecca Pallmeyer
)

**ZIMMER ENTITIES' SUGGESTION
OF LACK OF JURISDICTION**

The defendants, Zimmer, Inc., Zimmer Holdings, Inc., and Zimmer Surgical, Inc., f/k/a Zimmer Orthopaedic Surgical Products, Inc. (collectively, "Zimmer Entities"), respectfully suggest that there is no federal court jurisdiction over this action, for the following reasons:

1. The plaintiff, Joyce Miller ("Plaintiff"), filed the above-captioned action in the District Court for Northern District of Indiana on March 22, 2012. (Civil Action No. 3:12-cv-00141, Doc. 1). On March 29, 2012, Plaintiff filed a Notice Of Tag-Along for transfer of the above-captioned action to MDL 2272. (MDL No. 2272, Doc. 519).
2. Pursuant to 28 U.S.C. § 1332(1), a district court has original jurisdiction over civil actions between "citizens of different States."
3. Plaintiff alleges that this action was "brought pursuant to 28 U.S.C. § 1332, as diversity of citizenship exists among and between the parties." *See Complaint, ¶ 2.*
4. Plaintiff alleges that she is "a resident and citizen of Indiana." *See Complaint, ¶ 4.*

5. Plaintiff alleges, and the Zimmer Entities admit, that Zimmer, Inc., and Zimmer Holdings, Inc., are incorporated in Delaware and have their principal places of business in Indiana.¹

6. For purposes of diversity of citizenship, a corporation is deemed to be a citizen of both the state of its incorporation and the state where it has its principal place of business. 28 U.S.C. § 1332(c)(1). As Zimmer, Inc., and Zimmer Holdings, Inc., are incorporated in Delaware and have their principal places of business in Indiana, pursuant to 28 U.S.C. § 1332(c)(1), they are citizens of both Delaware and Indiana.

7. The Plaintiff, Zimmer, Inc., and Zimmer Holdings, Inc., are all citizens of Indiana and, thus, diversity jurisdiction does not exist pursuant to 28 U.S.C. § 1332.

8. Counsel for the Zimmer Entities contacted Plaintiff's counsel and informed her that jurisdiction does not exist in this matter under 28 U.S.C. § 1332. Plaintiff's counsel informed counsel for the Zimmer Entities that she intended to take no action to remedy this deficiency.

9. On April 10, 2012, the Zimmer Entities filed Defendants' Suggestion Of Lack Of Jurisdiction in the District Court for the Northern District of Indiana. (Civil Action No. 3:12-cv-00141, Doc. 6). On April 11, 2012, that Court ordered Plaintiff to file a response within 14 days. (Civil Action No. 3:12-cv-00141, Doc. 7). The above-captioned matter was transferred to MDL-2272 on April 13, 2012, prior to the filing of a response by Plaintiff. (Civil Action No. 3:12-cv-00141, Doc. 8).

¹ See MDL No. 2272 Master Long Form Complaint And Jury Demand at §§ 23-24, attached to the Complaint as Exhibit A (alleging that the defendants are incorporated in Delaware and have their principal places of business in Indiana) and Amended Master Long Form Answer And Additional Defendants (Dkt. 273), *In Re: Zimmer NexGen Knee Implant Products Liability Litigation*, Civil Action No. 1:11-cv-05468, N.D. Ill. (admitting the same).

Dated: June 1, 2012

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By:/s/ Joseph H. Yeager, Jr.

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Attorneys for the defendants, Zimmer, Inc., Zimmer Holdings, Inc., and Zimmer Surgical, Inc., f/k/a Zimmer Orthopaedic Surgical Products, Inc.

CERTIFICATE OF SERVICE

I certify that on June 1, 2012 a copy of the foregoing Zimmer Entities' Suggestion Of Lack Of Jurisdiction was filed electronically. Parties may access this filing through the Court's ECF/CFM system.

/s/ Joseph H. Yeager, Jr. _____